

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

THE SOUTH CAROLINA STATE
CONFERENCE OF THE NAACP,

and

TAIWAN SCOTT, on behalf of himself and all
other similarly situated persons,

Plaintiffs,

v.

THOMAS C. ALEXANDER, in his official
capacity as President of the Senate; LUKE A.
RANKIN, in his official capacity as Chairman
of the Senate Judiciary Committee; JAMES H.
LUCAS, in his official capacity as Speaker of
the House of Representatives; CHRIS
MURPHY, in his official capacity as Chairman
of the House of Representatives Judiciary
Committee; WALLACE H. JORDAN, in his
official capacity as Chairman of the House of
Representatives Elections Law Subcommittee;
HOWARD KNAPP, in his official capacity as
interim Executive Director of the South
Carolina State Election Commission; JOHN
WELLS, Chair, JOANNE DAY,
CLIFFORD J. EDLER, LINDA MCCALL,
and SCOTT MOSELEY, in their official
capacities as members of the South Carolina
Election Commission,

Defendants.

Case No. 3:21-cv-03302-MGL-TJH-RMG

THREE-JUDGE PANEL

**CONSENT MOTION TO SEAL
RESPONSE IN OPPOSITION TO
MOTION IN LIMINE (ECF No. 353)**

Defendants James H. Lucas (in his official capacity as Speaker of the South Carolina House
of Representatives¹), Chris Murphy (in his official capacity as Chairman of the South Carolina

¹ On May 12, 2022, James H. Lucas stepped down as Speaker of the South Carolina House of
Representatives. The current Speaker of the House is Representative G. Murrell Smith, Jr.

House of Representatives Judiciary Committee), and Wallace H. Jordan (in his official capacity as Chairman of the South Carolina House of Representatives Redistricting Ad Hoc Committee) (collectively, the “**House Defendants**”), by and through their undersigned counsel, hereby move to seal their Response in Opposition to Plaintiffs’ Motion in Limine on Clawed-Back Document (ECF No. 353) (hereinafter “**Response**”) pursuant to Federal Rule of Civil Procedure 5(d) and Local Civil Rule 5.03.²

On September 2, 2022, Plaintiffs’ moved to seal (ECF No. 339) certain exhibits related to their motion in limine (ECF No. 353) on a privileged document that was clawed back pursuant to Federal Rule of Civil Procedure 26(b)(5)(B). This Rule provides:

Information Produced. If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court **under seal** for a determination of the claim. The producing party must preserve the information until the claim is resolved.

Fed. R. Civ. P. 26(b)(5)(B) (emphasis added).

Plaintiffs moved to seal the document and now House Defendants seek to seal their substantive response to that motion. This response includes quotations from the privileged document, substantive discussion of its contents, and quotations and discussion from deposition testimony related to the document.

Because this would reveal privileged information, these quotations and discussion must be filed under seal in order to avoid waiver of attorney-client privilege. As is well known, waiver can

² Pursuant to Local Civil Rule 7.02, House Defendants have sought all parties’ consent to the filing of the Response under seal and all parties have consented.

occur by public revelation. *See, e.g., Tri-County Paving, Inc. v. Ashe County*, 2000 WL 1811606, at *1–2, 2000 U.S. Dist. LEXIS 19563, at *4 (W.D.N.C. Oct. 5, 2000). Revelation is “public” if “it destroys any expectation of privacy for the disclosed information.” *E.I. DuPont de Nemours & Co. v. Kolon Indus., Inc.*, 269 F.R.D. 600, 605 (E.D.Va.2010) (citations omitted).

House Defendants certify the Response they seek to seal meets the factors for sealing documents set out by the Fourth Circuit in *Ashcraft v. Conoco, Inc.* 218 F.3d 288, 302 (4th Cir. 2000), and *In re Knight Pub Co.*, 743 F.2d 231, 235 (4th Cir. 1984). Specifically:

1. Public notice of the request to seal and opportunity to object is afforded by virtue of this publicly filed motion and the description of the subject document in the chart attached as **Exhibit A** hereto.
2. Confidential, and potentially privileged, material appears throughout the subject document, and, therefore, redaction is not practical.
3. There is good reason to seal the requested documents. The material contained in the subject document involves confidential and privileged information and the document does not relate to any important historical public event.

Accordingly, House Defendants respectfully request that this Panel grant House Defendants leave to file under seal their Response. All documents under seal will be submitted to the Court and to all parties of record. A non-confidential descriptive index of the documents at issue is attached to this Motion as **Exhibit A**.

[signature page follows]

Respectfully submitted,

s/ Michael A. Parente

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